

July 7, 2021

Mr. Charles Smith
Acting Director
Biopesticide and Pollution Prevention Division (7509P)
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460-0001

RE: EPA-HQ-OPP-2020-0537 ("Pesticides; Modification to the Minimum Risk Pesticide Listing Program and Other Exemptions Under FIFRA Section 25(b)")

My recommendations:

1. **Coordinate with states to properly regulate companies that sell products that do not meet requirements for 25(b) exemption as set forth in 40 CFR 152.25(f).** E.g., many sellers of mosquito-control products claim on their labels to be 25(b) exempt yet clearly advertise with false claims (violating Condition 6) and thus are not (or should not be) exempt. But in my correspondence with all 50 states about a particular product sold with false claims, many states replied there was nothing they could do because "it's up to the EPA"; and many EPA officials told me, "it's up to individual states because it's a 25(b) exempt device". There seems to be confusion over who should issue stop-sale orders (or lawsuits) to companies that are selling scam products.
2. **Publicize decisions for stop-sale orders.** There are several scam mosquito-control products on the market currently and several states have denied the registration of such products. That's great for people living in those select states, but residents of other states are left to believe that the revocation of registration might be just a "paperwork" issue. Ideally, if a state has a good reason to issue a stop-sale order, it should share that information with the public. Or at the very least, the document that details the reasoning should be part of the official minutes of the state pesticide control board, open to citizens who would like more details. I see this situation as analogous to recalls. If a state ordered a recall of baby carriers, it would likely specify the reason (babies died) and thus the public in other states would benefit even if those other states had lax rules about safety and didn't do recalls. The secrecy only helps fraudulent companies.
3. **Modify wording of Condition 4 (health-related claims).** Currently the wording prohibits only those claims that link control of a pest with a specific disease it might carry. This distinction is likely meaningless to the general public. For example, if a mosquito-control product claims to eradicate all mosquitoes, a consumer is almost guaranteed to view that claim as extending to protection from West Nile and such. There are many examples of consumers stating exactly that (on Facebook), and retailers regularly mention that 25(b)-exempt product will protect against disease. I suggest prohibiting makers of 25(b) pesticides from claiming that they eradicate/eliminate/

control pests if those pests may transmit disease. This would include mosquitoes. Alternatively, disallow such products from being exempted from EPA regulation.

4. **Enforce product name rules.** The EPA currently prohibits product names “that express or imply a higher-level of efficacy than demonstrated by testing”. Some examples might be “Eradicator”, “Eliminator”, and “Pro Tech”. In fact, the EPA *specifically* mentioned the misleading nature of “Eradicator” as a product name in Table 1 of PR Notice 2002-X. Similar guidance is also highlighted in PR Notice 91-7 and PR Notice 93-6. My recommendation is that states have, and *enforce*, similar prohibitions. If these rules are going to be enforced on a state-by-state level then part of this recommendation is that states can deny a registration to a product even if it was granted one in its home state. E.g., if Mississippi allows a 25(b) pesticide to use a name that implies exaggerated efficacy, then other states should be allowed (and encouraged) to deny registration on that basis. And if a product currently has a misleading name due to lax oversight by its home state, the product name should be brought into compliance when state officials are alerted to the existence of EPA rules on product names. I.e., misleading names should not be grandfathered.

In my opinion, product names with exaggerated efficacy target those who might have limited background in science. I thus completely agree with Daniel Duer’s assessment that ineffective products (which tend to have cheaper, ineffective ingredients) may be adopted preferentially by lower-income communities, thus placing them at greater risk of contracting pest-transmitted diseases.

5. **Require efficacy data.** If a product makes an efficacy claim, then data supporting this claim should be required. Data should be from a randomized experiment with adequate replication and sound statistical analysis. I also strongly urge the EPA and states to accept only data from experiments that model actual use. E.g., if a mosquito-control product is supposed to kill mosquitoes outdoors, the data should not be from a cage experiment. If a company cannot supply trustworthy supporting data then the product should not be allowed to be exempt from EPA regulation. With these concerns in mind I highly recommend that all states adopt the guidelines developed by the Association of American Pesticide Control Officials’ 25(b) Working Group. If these guidelines became standard and enforceable there would be dramatically fewer scam pesticide products on the market.
6. **Require proof of all claims.** If a company makes claims in addition to efficacy, evidence supporting those claims should be provided. For example, if a company selling a mosquito-control product asserts that “mosquitoes will be drawn to the device” (there are multiple products with such a claim), proof of that actually happening should be required. Similarly, if company asserts that mosquito explode, video evidence of that happening should be provided.

Thank you for the opportunity to comment.

Sincerely,
Colin Purrington